

Baldwin's Kentucky Revised Statutes Annotated

Title XXXV. Domestic Relations

Chapter 403. Dissolution of Marriage; Child Custody (Refs & Annos)

Custody

KRS § 403.270

403.270 Custodial issues; best interests of child shall determine; joint custody permitted; de facto custodian

Currentness

- (1) (a) As used in this chapter and [KRS 405.020](#), unless the context requires otherwise, “de facto custodian” means a person who has been shown by clear and convincing evidence to have been the primary caregiver for, and financial supporter of, a child who has resided with the person for a period of six (6) months or more if the child is under three (3) years of age and for a period of one (1) year or more if the child is three (3) years of age or older or has been placed by the Department for Community Based Services. Any period of time after a legal proceeding has been commenced by a parent seeking to regain custody of the child shall not be included in determining whether the child has resided with the person for the required minimum period.
- (b) A person shall not be a de facto custodian until a court determines by clear and convincing evidence that the person meets the definition of de facto custodian established in paragraph (a) of this subsection. Once a court determines that a person meets the definition of de facto custodian, the court shall give the person the same standing in custody matters that is given to each parent under this section and [KRS 403.280](#), [403.340](#), [403.350](#), [403.822](#), and [405.020](#).
- (2) The court shall determine custody in accordance with the best interests of the child and equal consideration shall be given to each parent and to any de facto custodian. The court shall consider all relevant factors including:
- (a) The wishes of the child's parent or parents, and any de facto custodian, as to his custody;
- (b) The wishes of the child as to his custodian;
- (c) The interaction and interrelationship of the child with his parent or parents, his siblings, and any other person who may significantly affect the child's best interests;
- (d) The child's adjustment to his home, school, and community;
- (e) The mental and physical health of all individuals involved;
- (f) Information, records, and evidence of domestic violence as defined in [KRS 403.720](#);
- (g) The extent to which the child has been cared for, nurtured, and supported by any de facto custodian;

- (h) The intent of the parent or parents in placing the child with a de facto custodian; and
 - (i) The circumstances under which the child was placed or allowed to remain in the custody of a de facto custodian, including whether the parent now seeking custody was previously prevented from doing so as a result of domestic violence as defined in [KRS 403.720](#) and whether the child was placed with a de facto custodian to allow the parent now seeking custody to seek employment, work, or attend school.
- (3) The court shall not consider conduct of a proposed custodian that does not affect his relationship to the child. If domestic violence and abuse is alleged, the court shall determine the extent to which the domestic violence and abuse has affected the child and the child's relationship to both parents.
- (4) The abandonment of the family residence by a custodial party shall not be considered where said party was physically harmed or was seriously threatened with physical harm by his or her spouse, when such harm or threat of harm was causally related to the abandonment.
- (5) The court may grant joint custody to the child's parents, or to the child's parents and a de facto custodian, if it is in the best interest of the child.
- (6) If the court grants custody to a de facto custodian, the de facto custodian shall have legal custody under the laws of the Commonwealth.

Credits

HISTORY: 2004 c 133, § 42, eff. 7-13-04; 2000 c 14, § 51, eff. 7-14-00; 1998 c 250, § 1, eff. 7-15-98; 1992 c 169, § 2, eff. 7-14-92; 1980 c 158, § 1; 1978 c 369, § 1, c 86, § 1; 1972 c 182, § 17

[Notes of Decisions \(283\)](#)

KRS § 403.270, KY ST § 403.270

Current through the end of 2012 Regular Session and the 2012 First Extraordinary Session.

Baldwin's Kentucky Revised Statutes Annotated

Title XXXV. Domestic Relations

Chapter 403. Dissolution of Marriage; Child Custody (Refs & Annos)

Custody

KRS § 403.280

403.280 Temporary custody orders

Currentness

- (1) A party to a custody proceeding may move for a temporary custody order. The motion must be supported by an affidavit as provided in [KRS 403.350](#). The court may award temporary custody under the standards of [KRS 403.270](#) after a hearing, or, if there is no objection, solely on the basis of the affidavits.
- (2) If a proceeding for dissolution of marriage or legal separation is dismissed, any temporary custody order is vacated unless a parent or the child's custodian moves that the proceeding continue as a custody proceeding and the court finds, after a hearing, that the circumstances of the parents and the best interests of the child require that a custody decree be issued.
- (3) If a custody proceeding commenced in the absence of a petition for dissolution of marriage or legal separation under [KRS 403.822\(1\)\(a\) or \(b\)](#) is dismissed, any temporary custody order is vacated.
- (4) If a court determines by clear and convincing evidence that a person is a de facto custodian, the court shall join that person in the action, as a party needed for just adjudication under Rule 19 of the Kentucky Rules of Civil Procedure.

Credits

HISTORY: [2004 c 133, § 43, eff. 7-13-04](#); [1998 c 250, § 2, eff. 7-15-98](#); [1972 c 182, § 18, eff. 6-16-72](#)

[Notes of Decisions \(7\)](#)

KRS § 403.280, KY ST § 403.280

Current through the end of 2012 Regular Session and the 2012 First Extraordinary Session.

Baldwin's Kentucky Revised Statutes Annotated

Title XXXV. Domestic Relations

Chapter 403. Dissolution of Marriage; Child Custody (Refs & Annos)

Custody

KRS § 403.290

403.290 Child; court may interview, court may seek advice of professional personnel

Currentness

- (1) The court may interview the child in chambers to ascertain the child's wishes as to his custodian and as to visitation. The court may permit counsel to be present at the interview. The court shall cause a record of the interview to be made and to be part of the record in the case.
- (2) The court may seek the advice of professional personnel, whether or not employed by the court on a regular basis. The advice given shall be in writing and made available by the court to counsel upon request. Counsel may examine as a witness any professional personnel consulted by the court.

Credits

HISTORY: 1972 c 182, § 19, eff. 6-16-72

Notes of Decisions (12)

KRS § 403.290, KY ST § 403.290

Current through the end of 2012 Regular Session and the 2012 First Extraordinary Session.

Baldwin's Kentucky Revised Statutes Annotated

Title XXXV. Domestic Relations

Chapter 403. Dissolution of Marriage; Child Custody (Refs & Annos)

Custody

KRS § 403.300

403.300 Investigation; court may order in custody proceedings; attorney to receive copy

Currentness

- (1) In contested custody proceedings, and in other custody proceedings if a parent or the child's custodian so requests, the court may order an investigation and report concerning custodial arrangements for the child. The investigation and report may be made by the friend of the court or such other agency as the court may select.
- (2) In preparing his report concerning a child, the investigator may consult any person who may have information about the child and his potential custodial arrangements. Upon order of the court, the investigator may refer the child to professional personnel for diagnosis. The investigator may consult with and obtain information from medical, psychiatric, or other expert persons who have served the child in the past without obtaining the consent of the parent or the child's custodian; but the child's consent must be obtained if he has reached the age of 16, unless the court finds that he lacks mental capacity to consent. If the requirements of subsection (3) are fulfilled, the investigator's report may be received in evidence at the hearing.
- (3) The clerk shall mail the investigator's report to counsel and to any party not represented by counsel at least 10 days prior to the hearing. The investigator shall make available to counsel and to any party not represented by counsel the investigator's file of underlying data, and reports, complete texts of diagnostic reports made to the investigator pursuant to the provisions of subsection (2), and the names and addresses of all persons whom the investigator has consulted. Any party to the proceeding may call the investigator and any person whom he has consulted for cross-examination. A party may not waive his right of cross-examination prior to the hearing.

Credits

HISTORY: 1972 c 182, § 20, eff. 6-16-72

Notes of Decisions (4)

KRS § 403.300, KY ST § 403.300

Current through the end of 2012 Regular Session and the 2012 First Extraordinary Session.

Baldwin's Kentucky Revised Statutes Annotated

Title XXXV. Domestic Relations

Chapter 403. Dissolution of Marriage; Child Custody (Refs & Annos)

Custody

KRS § 403.310

403.310 Hearings; custody proceedings shall receive priority

Currentness

- (1) Custody proceedings shall receive priority in being set for hearing.
- (2) The court may tax as costs the payment of necessary travel and other expenses incurred by any person whose presence at the hearing the court deems necessary to determine the best interests of the child.
- (3) The court without a jury shall determine questions of law and fact. If it finds that a public hearing may be detrimental to the child's best interests, the court may exclude the public from a custody hearing, but may admit any person who has a direct and legitimate interest in the particular case or a legitimate educational or research interest in the work of the court.
- (4) If the court finds it necessary to protect the child's welfare that the record of any interview, report, investigation, or testimony in a custody proceeding be kept secret, the court may make an appropriate order sealing the record.

Credits

HISTORY: 1972 c 182, § 21, eff. 6-16-72

Notes of Decisions (1)

KRS § 403.310, KY ST § 403.310

Current through the end of 2012 Regular Session and the 2012 First Extraordinary Session.

Baldwin's Kentucky Revised Statutes Annotated

Title XXXV. Domestic Relations

Chapter 403. Dissolution of Marriage; Child Custody (Refs & Annos)

Custody

KRS § 403.320

403.320 Visitation of minor child

Currentness

- (1) A parent not granted custody of the child is entitled to reasonable visitation rights unless the court finds, after a hearing, that visitation would endanger seriously the child's physical, mental, moral, or emotional health. Upon request of either party, the court shall issue orders which are specific as to the frequency, timing, duration, conditions, and method of scheduling visitation and which reflect the development age of the child.
- (2) If domestic violence and abuse, as defined in [KRS 403.720](#), has been alleged, the court shall, after a hearing, determine the visitation arrangement, if any, which would not endanger seriously the child's or the custodial parent's physical, mental, or emotional health.
- (3) The court may modify an order granting or denying visitation rights whenever modification would serve the best interests of the child; but the court shall not restrict a parent's visitation rights unless it finds that the visitation would endanger seriously the child's physical, mental, moral, or emotional health.

Credits

HISTORY: [1992 c 169](#), § 3, c [414](#), § 1, eff. 7-14-92; 1972 c 182, § 22

Legislative Research Commission Note (7-14-92): This section was amended by two 1992 Acts which do not appear to be in conflict and have been compiled together.

[Notes of Decisions \(58\)](#)

KRS § 403.320, KY ST § 403.320

Current through the end of 2012 Regular Session and the 2012 First Extraordinary Session.

Baldwin's Kentucky Revised Statutes Annotated

Title XXXV. Domestic Relations

Chapter 403. Dissolution of Marriage; Child Custody (Refs & Annos)

Custody

KRS § 403.325

403.325 Visitation denied parent convicted of homicide of other parent; exception; hearing required

Currentness

- (1) Notwithstanding the provisions of [KRS 403.320](#), if a parent of a child is convicted of murder or manslaughter in the first degree of the other parent, a court shall not grant the convicted parent visitation rights with respect to that child unless the court, through a hearing, determines that visitation is in the child's best interest.
- (2) If the court later modifies a denial of visitation to grant visitation, the court shall do so only after a hearing which establishes that visitation is in the child's best interest.
- (3) In any hearing conducted under subsection (1) or (2) of this section:
 - (a) Jurisdiction shall lie with the Circuit Court of the county where the child resides; and
 - (b) The convicted parent, to obtain visitation, shall have to meet the burden of proving that visitation is in the child's best interest.

Credits

HISTORY: [2000 c 58, § 1, eff. 7-14-00](#)

KRS § 403.325, KY ST § 403.325

Current through the end of 2012 Regular Session and the 2012 First Extraordinary Session.

Baldwin's Kentucky Revised Statutes Annotated

Title XXXV. Domestic Relations

Chapter 403. Dissolution of Marriage; Child Custody (Refs & Annos)

Custody

KRS § 403.330

403.330 Judicial supervision of custody decree or agreement

Currentness

- (1) Except as otherwise agreed by the parties in writing at the time of the custody decree, the custodian may determine the child's upbringing, including his education, health care, and religious training, unless the court after hearing, finds, upon motion by the noncustodial parent, that in the absence of a specific limitation of the custodian's authority, the child's physical health would be endangered or his emotional development significantly impaired.
- (2) If both parents or all contestants agree to the order, or if the court finds that in the absence of the order the child's physical health would be endangered or his emotional development significantly impaired, the court may order the local probation, another appropriate local entity, or if currently involved in the case, the child welfare department to exercise continuing supervision over the case to assure that the custodial or visitation terms of the decree are carried out.

Credits

HISTORY: 1998 c 338, § 1, eff. 7-15-98; 1972 c 182, § 23, eff. 6-16-72

Notes of Decisions (7)

KRS § 403.330, KY ST § 403.330

Current through the end of 2012 Regular Session and the 2012 First Extraordinary Session.

Baldwin's Kentucky Revised Statutes Annotated

Title XXXV. Domestic Relations

Chapter 403. Dissolution of Marriage; Child Custody (Refs & Annos)

Custody

KRS § 403.340

403.340 Modification of custody decree; modification based on
active duty deployment to revert back on parent or custodian's return

Effective: April 25, 2006

[Currentness](#)

- (1) As used in this section, “custody” means sole or joint custody, whether ordered by a court or agreed to by the parties.
- (2) No motion to modify a custody decree shall be made earlier than two (2) years after its date, unless the court permits it to be made on the basis of affidavits that there is reason to believe that:
 - (a) The child's present environment may endanger seriously his physical, mental, moral, or emotional health; or
 - (b) The custodian appointed under the prior decree has placed the child with a de facto custodian.
- (3) If a court of this state has jurisdiction pursuant to the Uniform Child Custody Jurisdiction Act, the court shall not modify a prior custody decree unless after hearing it finds, upon the basis of facts that have arisen since the prior decree or that were unknown to the court at the time of entry of the prior decree, that a change has occurred in the circumstances of the child or his custodian, and that the modification is necessary to serve the best interests of the child. When determining if a change has occurred and whether a modification of custody is in the best interests of the child, the court shall consider the following:
 - (a) Whether the custodian agrees to the modification;
 - (b) Whether the child has been integrated into the family of the petitioner with consent of the custodian;
 - (c) The factors set forth in [KRS 403.270\(2\)](#) to determine the best interests of the child;
 - (d) Whether the child's present environment endangers seriously his physical, mental, moral, or emotional health;
 - (e) Whether the harm likely to be caused by a change of environment is outweighed by its advantages to him; and
 - (f) Whether the custodian has placed the child with a de facto custodian.

- (4) In determining whether a child's present environment may endanger seriously his physical, mental, moral, or emotional health, the court shall consider all relevant factors, including, but not limited to:
- (a) The interaction and interrelationship of the child with his parent or parents, his de facto custodian, his siblings, and any other person who may significantly affect the child's best interests;
 - (b) The mental and physical health of all individuals involved;
 - (c) Repeated or substantial failure, without good cause as specified in [KRS 403.240](#), of either parent to observe visitation, child support, or other provisions of the decree which affect the child, except that modification of custody orders shall not be made solely on the basis of failure to comply with visitation or child support provisions, or on the basis of which parent is more likely to allow visitation or pay child support;
 - (d) If domestic violence and abuse, as defined in [KRS 403.720](#), is found by the court to exist, the extent to which the domestic violence and abuse has affected the child and the child's relationship to both parents.
- (5) (a) Except as provided in paragraph (b) of this subsection, any court-ordered modification of a child custody decree, based in whole or in part on:
- 1. The active duty of a parent or a de facto custodian as a regular member of the United States Armed Forces deployed outside the United States; or
 - 2. Any federal active duty of a parent or a de facto custodian as a member of a state National Guard or a Reserve component;
- shall be temporary and shall revert back to the previous child custody decree at the end of the deployment outside the United States or the federal active duty, as appropriate.
- (b) A parent or de facto custodian identified in paragraph (a) of this subsection may consent to a modification of a child custody decree that continues past the end of the deployment outside the United States or the federal active duty, as appropriate.
- (6) Attorney fees and costs shall be assessed against a party seeking modification if the court finds that the modification action is vexatious and constitutes harassment.

Credits

HISTORY: 2006 c 252, Part XXVIII, § 10, eff. 4-25-06; 2001 c 161, § 2, eff. 3-21-01; 1998 c 250, § 3, eff. 7-15-98; 1992 c 414, § 3, eff. 7-14-92; 1972 c 182, § 24

[Notes of Decisions \(143\)](#)

KRS § 403.340, KY ST § 403.340

Current through the end of 2012 Regular Session and the 2012 First Extraordinary Session.

End of Document

© 2013 Thomson Reuters. No claim to original U.S. Government Works.

Baldwin's Kentucky Revised Statutes Annotated

Title XXXV. Domestic Relations

Chapter 403. Dissolution of Marriage; Child Custody (Refs & Annos)

Custody

KRS § 403.350

403.350 Affidavit required with motion for temporary custody order or for modification of custody decree

Currentness

A party seeking a temporary custody order or modification of a custody decree shall submit together with his moving papers an affidavit setting forth facts supporting the requested order or modification and shall give notice, together with a copy of his affidavit, to other parties to the proceeding, who may file opposing affidavits. If a court determines that a child is in the custody of a de facto custodian, the court shall make the de facto custodian a party to the proceeding. The court shall deny the motion unless it finds that adequate cause for hearing the motion is established by the affidavits, in which case it shall set a date for hearing on an order to show cause why the requested order or modification should not be granted.

Credits

HISTORY: 1998 c 250, § 4, eff. 7-15-98; 1972 c 182, § 25, eff. 6-16-72

Notes of Decisions (31)

KRS § 403.350, KY ST § 403.350

Current through the end of 2012 Regular Session and the 2012 First Extraordinary Session.